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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2887 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil  
Judge? No

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HEIRS AND LEGAL REPRESENTATIVES OF MATHURBHAI VALLABHBHAI PATEL

Versus

STATE OF GUJARAT & ANR.

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Appearance:

Shri P.J. Vyas, Advocate, for the Petitioners

Shri T.H. Sompura, Asst. Govt. Pleader, for the  
Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 20/03/96

ORAL JUDGEMENT

The order passed by the Competent Authority at  
Surat (respondent No. 2 herein) on 21st November 1984  
under sec. 21(2) of the Urban Land (Ceiling and

Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (the appellate authority for convenience) on 11th April 1988 in Appeal No. Surat-1723 of 1984 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No.2 cancelled the permission granted to the predecessor-in-title (the deceased for convenience) of the petitioners under sec. 21(1) of the Act by his order passed on 30th May 1980 qua one parcel of land bearing survey No. 10/1 admeasuring 5159.57 square meters situated at Amaroli within the urban agglomeration of Surat (the disputed land for convenience).

2. The facts giving rise to this petition move in a narrow compass. It appears that the prescribed form for the application under sec. 21(1) of the Act was filled in by the deceased before he breathed his last on 9th January 1979. It appears that that prescribed form was submitted to respondent No. 2 by the present petitioners on 24th January 1979. On that basis the deceased was granted permission under sec. 21(1) of the Act qua the disputed land by the order passed by respondent No.2 on 30th May 1980 on certain terms and conditions. Those conditions included commencement of the construction work within one year from the date of the order under intimation to respondent No. 2 and completion of the entire scheme in all respects within 5 years from the date of the order. It appears that the petitioners did not start construction work within the stipulated time-limit. Thereupon a show-cause notice came to be issued to the deceased on 21st July 1983 calling upon him to show cause why the permission granted under sec. 21(1) of the Act should not be cancelled. Its copy is at Annexure B to this petition. It appears that another show-cause notice was also given on 6th December 1983 for the same purpose. Its copy is at Annexure E to this petition. The reply to the notice at Annexure B to this petition is at Annexure D to this petition and the reply to the show-cause notice at Annexure E to this petition is at Annexure F to this petition. After hearing the parties, by his order passed on 21st November 1984, respondent No. 2 cancelled the permission granted under sec. 21(1) of the Act. Its copy is at Annexure I to this petition. The aggrieved petitioners carried the matter in appeal before the appellate authority under sec. 33 of the Act. It came to be registered as Appeal No. Surat-1723 of 1984. By the order passed on 11th April 1988 in the aforesaid appeal, the appellate authority dismissed it. Its copy is at Annexure J to this petition. The aggrieved petitioners have thereupon

approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure I to this petition as affirmed in appeal by the appellate order at Annexure J to this petition.

3. It appears that the petitioners had no desire to fulfil the conditions on which the permission under sec. 21(1) of the Act was granted earlier. The disputed land was a new tenure land. As observed by the appellate authority in the appellate order at Annexure J to this petition, respondent No.2 could not have granted any permission under sec. 21(1) of the Act till it was converted from new tenure to old tenure. For the time being, that point may not be taken into consideration. What was expected of the petitioners to do was to get the new tenure land to be converted into the old tenure land. They could have applied for what is popularly known as the N.A. permission thereafter. Only then they could have applied for building permission from the local authority. Instead, somehow they could manage to obtain the building permission without obtaining any N.A. permission or without getting the land converted from new tenure to old tenure. Their application for N.A. permission was not considered till they could get the land converted from new tenure to old tenure. Their application for conversion for the purpose was considered and they were required to pay the premium for such conversion. It appears that they paid part premium only and not the full premium as required to be paid. Later on they made one application on 20th November 1984 to the Assistant Collector of Choryasi Prant of Surat requesting him to refund the amount of premium for conversion paid by them for getting the land converted from new tenure to old tenure. Its copy is at Annexure G to this petition. Therein it has been clearly mentioned that they wanted to use the disputed land for their own purposes and that they did not want to transfer it. This document at Annexure G to this petition makes it clear that the petitioners had not planned to complete the scheme in any manner; else they would not have sat silent for all these years in that regard.

4. In view of my aforesaid discussion, it is not necessary to examine the merits of the case on any other point. I am of the opinion that the impugned order at Annexure I to this petition as affirmed in appeal by the appellate order at Annexure J to this petition calls for no interference by this Court in this petition under art. 226 of the Constitution though on a different reasoning.

5. In the result, this petition fails. It is hereby  
rejected. Rule is discharged with no order as to costs.

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